



Comptroller General
of the United States

Washington, D.C. 20548

K41072 Maeder

Decision

Matter of: Astronautics Corporation of America

File: B-242782

Date: June 5, 1991

Daniel R. Wade and Michael Russek for the protester.
Jerome R. Hamilton, Esq., and Millard F. Pippin, Department
of the Air Force, for the agency.
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the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Protest against issuance of delivery order under existing contract is denied where record establishes that the order for engineering services to replace circuit card assemblies and redesign the F-16 Control Air Data Computer was within the scope of an existing contract to provide engineering services for the microelectronics technology support program.
2. The Federal Acquisition Regulation does not prohibit the use of an indefinite-quantity contract for the acquisition of other than commercial items or prohibit the issuance of a cost-plus-fixed fee indefinite-quantity contract.

DECISION

Astronautics Corporation of America protests the issuance by the Sacramento Air Logistics Center (SM-ALC), McClellan Air Force Base, California, of a delivery order to Honeywell Defense Systems, Inc., to obtain engineering services for reliability, modernization, and upgrade of the Central Air Data Computer (CADC) and computer circuit cards used in F-16 aircraft under Honeywell's existing time and material, indefinite quantity contract No. F04606-90-D-0002. Astronautics contends that the requirements of the delivery order are not within the scope of the Honeywell contract.

We deny the protest.

The requirements of the time and material contract were synopsized in the Commerce Business Daily (CBD) in March, 1988. The synopsis indicated that the Air Force was seeking "proposals for engineering services for the microelectronics technology support program (MTSP)" to resolve "critical or

obsolete microelectronics support problems as well as providing for insertions of advanced semiconductor technologies." The synopsis stated that the requirements included, among other things, analysis, evaluation, design, fabrication, prototyping, and insertions of Very High Speed Integrated Circuits (VHSIC), and advanced semiconductor technology integrated circuits (ICS) and systems, "to be applied to discontinued, nonprocurable ICS and the development of form-fit-function emulation replacements and supporting methodologies." Ten offerors responded to the solicitation and Honeywell was awarded the contract on December 19, 1989. Astronautics did not submit an offer.

Under the terms of the contract, Honeywell is required to provide new microelectronics technology for form-fit-function replacements for obsolete microelectronic and semiconductor components in the Department of Defense (DOD) weapons systems inventory. Generally, contract requirements include providing engineering services/items for the analysis, prototype design, fabrication, replacement/insertion and limited production of ICS devices and microelectronic circuit components. Specifically, paragraph 3.4.6 of the contract statement of work (SOW) states that the contractor shall provide "Prototyping Services" and "shall develop and deliver engineering prototypes . . . including VHSIC and non-VHSIC devices, systems and microelectronic circuit replacements and components." Paragraph 3.4.7 calls for "Testing/Screening Services" and paragraph 3.4.8 requires "Advanced Technology Insertions and Application Services," including the design, development, testing and provision of prototype circuit boards, limited production quantities of advanced technology devices for technology insertions and applications, and the insertion/integration of the advanced technology into the system. The contract schedule for required supplies or services lists 30 contract line items (CLINs). CLIN 0024, at issue here, reads, in relevant part, as follows:

"Engineering services in support of microelectronics design development and insertion in accordance with statement of work SM-ALC/MME 86-134, dated 89 Oct. 1, excluding paras 3.4.9., 3.4.10, 3.4.11 and 3.4.17."

The Air Force issued delivery order No. 0005, titled "F-16 CADC [Central Air Data Computer] Reliability and Modernization Upgrade," to Honeywell on December 19, 1990. The purpose of this order is to provide a form-fit-function replacement of 13 circuit card assemblies, using advanced technology, such as VHSIC/VHSIC-like technology, to redesign the CADC, utilizing the existing CADC chassis, pressure transducers and power supply and to build 12 "CADCs representative of the production design" Honeywell will also develop, test, document

and deliver all software needed to operate the CADC. The schedule for supplies or services under this delivery order included CLINS 0024 and 0025. CLIN 0024 reads, in relevant part:

"Engineering services in support of microelectronics design development and insertion in accordance with statement of work SM-ALC/MME 90-345 F-16 CADC reliability and modernization upgrade."

Astronautics contends that the services requested by delivery order No. 0005 are not within the scope of the basic contract and that the Air Force's actions avoid full and open competition for the F-16 CADC upgrade. The protester argues that nothing in the March 1988 synopsis or the contract references the F-16 aircraft or the delivery requirement of 12 CADCs "representative of production design." Astronautics contends that while the synopsis provided details of engineering services that may be required, it did not "provide any details regarding what systems could be applied to the general, indefinite-quantity contract." The protester says that the synopsis refers only to "advanced semiconductor technology integrated circuits and systems" which could "apply to every electronic item utilized by the [DOD]." The contract does not reference the F-16 aircraft or provide "any detail regarding potential programs to be included within its scope" and none of the deliverables listed in the contract supports the delivery of 12 CADCs.

Astronautics argues that the Air Force, by failing to synopsise the order requirements, violated Federal Acquisition Regulation (FAR) § 6.001(e)(1), which provides that orders placed under indefinite-quantity contracts are exempt from the FAR competition requirements only where "all responsible sources were realistically permitted to compete for the requirements contained in the order" Astronautics argues that even though it was given an opportunity to compete for the indefinite-quantity contract, it is "still entitled to the right to compete for the order"

Finally, Astronautics contends that delivery order No. 0005, issued on a cost-plus-fixed-fee basis, violates FAR § 16.501(c), which states that indefinite-delivery contracts may provide for firm, fixed prices, fixed prices with economic price adjustments, fixed prices with prospective redetermination or prices based on catalog or market prices, and violates FAR § 16.504(b) which states that "[a]n indefinite-quantity contract should be used only for items and services that are commercial products" Astronautics contends that engineering service is not a commercial product.

The Air Force contends that delivery order No. 0005 falls under line item 24 of the existing contract and is fully within the scope of the properly-awarded contract. The agency says that order No. 0005 "orders services virtually identical to those of line item 24 in the basic contract." The order states that the tasks required are within the scope of the basic contract, paragraphs 3.4.6, 3.4.7, 3.4.8(h), and 3.4.11. The agency asserts that the CBD synopsis which contained "substantial detail regarding the work to be done," provided adequate notice for the work at issue under order No. 0005, and, since all responsible sources were given an opportunity to compete on the contract, no further competition on the order was required. The agency also maintains that the issuance of the delivery order is a matter of contract administration which our Office should not review.

As a general rule, our Bid Protest Regulations provide for dismissal of protests involving contract administration matters. 4 C.F.R. § 21.3(m)(1). We will, however, consider a protest that a delivery order issued under an existing contract is beyond the scope of that contract, changing the nature of the contract originally awarded, because the work covered by the delivery order would be subject to requirements for competition absent a valid sole-source determination. See Defense Sys. Group; Warren Pumps, Inc.; Dresser Indus., Inc., B-240295; B-240295.2; B-240295.3, Nov. 6, 1990.

We do not find that the delivery order materially changed the nature or purpose of the original contract. The record shows that the Air Force requires engineering services for MTSP for "form-fit-function emulation replacements" which broadly means replacement systems for Air Force weapons systems. As the protester correctly notes, no specific components or systems used by the Air Force were identified in either the synopsis or the basic contract. Rather, the agency broadly stated a series of services it required, including the design and prototyping of microelectronic circuits and components, and the insertion of these upgraded parts into any number of existing Air Force equipment. We agree with the agency's position that paragraphs 3.4.6, 3.4.7., and 3.4.8 of the basic contract support the circuit boards and delivery of 12 CADCs required under the delivery order. As noted above, paragraph 3.4.6 requires, among other things, "VHSIC . . . devices, systems and microelectronic circuit replacements and components" and paragraph 3.4.8 calls for "limited production quantities" and "prototype circuit boards." While the protester disagrees, we find that this language reasonably encompasses the delivery requirement of 12 CADCs "representative of production design." Moreover, as the agency notes, CLIN 0024 of the basic contract is nearly identical to CLIN 00024 of the delivery order; the agency merely specified in

the delivery order the vehicle, here the F-16, into which the upgraded replacement components would be inserted.

Accordingly, we conclude that the agency reasonably determined to satisfy its needs through the issuance of a delivery order under an existing engineering services contract. Since the delivery order falls within the scope of the existing engineering services contract, there is no basis to require a separately-competed procurement as urged by the protester. See Stanford Telecommunications, Inc., B-241449, Dec. 10, 1990, 90-2 CPD ¶ 475.


Here, the basic contract appears to encompass an extremely broad spectrum of items and services, which prompted the protester to hypothesize that DOD could use the contract routinely to obtain a wide range of electronic items without meaningful competition. While on the limited record presented in this case we could not resolve the question, we recognize that where an agency conducts a procurement for a total package or for broadly aggregated needs without a legitimate basis for bundling its requirements rather than breaking them out, competition is inhibited in derogation of the mandate for "full and open competition" under the Competition in Contracting Act of 1984, 10 U.S.C. § 2304(a)(1)(A) (1988). See LaBarge Products, Inc., B-232201, Nov. 23, 1988, 88-2 CPD ¶ 510; Pacific Sky Supply, Inc., B-228049, Nov. 23, 1987, 87-2 CPD ¶ 504; Systems, Terminals & Communications Corp., B-218170, May 21, 1985, 85-1 CPD ¶ 578. However, as the protester also acknowledges, the CBD synopsis indicated the broad range of services which could be acquired. Astronautics did not timely protest the scope of the procurement in 1988. To the extent that Astronautics is now protesting the scope of the requirements under the basic contract, the protest is untimely.

We also note that the protester's allegation that FAR § 16.504(b) prohibits the use of an indefinite-quantity contract with this delivery order is incorrect. That section provides, in part, that "[a]n indefinite-quantity contract should be used only for items or services that are commercial products or commercial-type products . . . and when a recurring need is anticipated."^{1/} In our view, the use of the word "should" rather than "shall," in FAR § 16.504(b) indicates that the regulation is permissive in nature. It

^{1/} While not relevant to this protest, we note that subsequent to the issuance of the delivery order, FAR § 16.504(b) was amended to delete the reference to "commercial products or commercial-type products" and now provides that an indefinite-quantity contract should be used only when a recurring need is anticipated. FAR § 16.504 (b) (FAC 90-4).

does not impose a mandatory prohibition against the use of the indefinite-quantity-type contract for other than commercial items or services. Morrison Constr. Servs., Inc., B-240789, Dec. 18, 1990, 70 Comp. Gen. ___, 90-2 CPD ¶ 499. Similarly, the use of the word "may" in FAR § 16.501(c) indicates that the regulation is permissive and does not categorically limit indefinite-quantity contracts to firm, fixed prices, fixed prices with economic price adjustments, or to any of the other listed price forms.

The protest is denied.


for James F. Hinchman
General Counsel